

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FS:LI:POSTF-136867-02

REGole

date: August 8, 2002

to: Territory Manager, Natural Resources
Attn: Randyl Jones
Group 1416

from: Jody Tancer, Associate Area Counsel
(CC:LM:FS:LI)

subject: [REDACTED] Corporation D/B/A [REDACTED]

EIN: [REDACTED]

This is in further response to your request for our assistance in drafting a Form 872 for the above related entity for the period beginning May 7, [REDACTED] and ending December 31, [REDACTED]. This taxpayer is part of the [REDACTED] was previously rendered on related matters.

Issue

Who is the proper party to execute a Form 872 on behalf of the above-referenced entity, and how should the Form 872 be captioned?

Conclusion

The Form 872 should be captioned as follows:

[REDACTED] Corp. (EIN: [REDACTED]), formerly [REDACTED] Corp., formerly [REDACTED], Inc., doing business under the names [REDACTED] and/or [REDACTED].

Facts

The taxpayer is a member of the [REDACTED] Corp. (EIN [REDACTED]) affiliated group. [REDACTED] Corp. transferred [REDACTED] distribution assets in exchange for stock in an I.R.C. § 351 exchange. The taxpayer filed its initial Form 1120 for the period commencing [REDACTED] and ending [REDACTED] as [REDACTED] Corporation D/B/A [REDACTED] Corp. You

have requested our assistance in protecting the statute of limitations for this year.

The taxpayer was incorporated as [REDACTED], Inc. on [REDACTED]. On [REDACTED], Inc. amended its certificate of incorporation to change its name to [REDACTED] Corporation. On [REDACTED] the taxpayer further amended its name to [REDACTED] Corporation. On [REDACTED], the taxpayer filed a Certificate of Assumed Name, pursuant to General Business Law § 130, doing business as [REDACTED]. On [REDACTED], the taxpayer filed a subsequent Certificate of Assumed Name, pursuant to General Business Law § 130, doing business as [REDACTED].

Discussion

[REDACTED] Corporation has undergone several name changes. However, none of these changes have effected the continued existence of the taxpayer. I.R.C. § 368(a)(1)(F). Since the taxpayer remains in existence, an officer of the taxpayer, should execute a Form 872 for the period ended [REDACTED]. The Form 872 should set forth all of the legal changes of [REDACTED] since its inception. Accordingly, we recommend that the Form 872 be captioned as follows:

[REDACTED] Corp. (EIN: [REDACTED]), formerly [REDACTED] Corp., formerly [REDACTED], Inc., doing business under the names [REDACTED] and/or [REDACTED].

The signature line of the taxpayer should bear the same taxpayer identification. An officer of the taxpayer should sign the Form 872.

General Instructions

We request that you follow the procedures set forth herein to ensure compliance with I.R.C. § 6501(c)(4)(B). Section 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time.

The required notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to

extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

You should be aware that, under routine procedures, which have been established for opinions of this type, we have referred this opinion to the National Office for review. That review might result in modifications of the conclusions herein. You should not execute Forms 872 based on this advice until you receive a supplemental memorandum wherein we finalize our opinion. We will inform you in writing of the result of the review as soon as we hear from the National Office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

Any questions regarding this opinion should be referred to Rose Gole at (516) 688-1702.

Disclosure Statement

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

JODY TANCER
Associate Area Counsel
Brooklyn

By: _____
ROSE E. GOLE
Attorney